

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT WITH CONCRETE PRECAST SYSTEMS, INC. Permit No. VA0089818**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and CPS, for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in the Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “CPS” means Concrete Precast Systems, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
9. “Permit,” means VPDES Permit No. VA0089818.

## **SECTION C: Findings of Fact and Conclusions of Law**

1. CPS operates a precast concrete manufacturing facility that is located at 1316 Yacht Drive, Chesapeake, Virginia. CPS is subject to the Permit, which was issued on August 3, 1998, and expires on August 3, 2003. The Permit allows the discharge of equipment washdown water and storm water from permitted outfall 001 to the Southern Branch of the Elizabeth River, a tributary to the Chesapeake Bay.
2. Section 62.1-44.5.A of the Code, §9 VAC 25-31-50.A.1 of the Regulations, and Part II.F.1 of the Permit state: "Except in compliance with a permit...issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
3. Section 62.1-44.5.B of the Code, §9 VAC 25-31-50.B of the Regulations, and Part II.G of the Permit state any person/permittee "who discharges or causes or allows a discharge of...wastes...into or upon state waters in violation of Part II.F, shall notify the Department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery."
4. Section 62.1-44.31 of the Code states: "It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter..."
5. Part I.B.8 of the Permit states: "The permittee shall ensure that all basins or lagoons maintain a minimum freeboard of one (1) foot at all times."
6. Part II. D of the Permit states: "The permittee shall furnish to the Department, within a reasonable time, any information which the Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit."
7. Part I.A.1 of the Permit establishes maximum effluent limits for pH and TSS of 9.0 SU and 60mg/L, respectively. In addition, the Permit establishes an average concentration for TSS of 30mg/L. CPS reported a maximum concentration for pH of 10.2 SU and TSS of 71mg/L. The Permit establishes an average concentration for TSS of 30mg/L. CPS reported an average concentration of 53.5mg/L. On March 28, 2002, DEQ issued CPS a warning letter (No. W2002-03-T-1006) for exceeding permit effluent limits for the December 2001 monitoring period.
8. On January 23, 2002, DEQ inspected CPS and found runoff from CPS entering a drop inlet, which leads to an outfall on the Elizabeth River. CPS did not report this discharge to DEQ and did not have storm water control measures in place to prevent runoff from leaving the site. DEQ made CPS aware of this drop inlet and the apparent potential for discharge. On June 26, 2002, DEQ inspected CPS and found that straw bales had been placed around the drop inlet but were not being maintained. A large amount of solids had collected around the drop inlet.
9. On November 4, 2002, DEQ inspected CPS and found wastewater flowing over the berm of the BMP sedimentation pond and into the Elizabeth River. CPS did not report this unpermitted discharge to DEQ. There was no visible freeboard.
10. On October 10, 2001, the State Water Control Board finalized a consent special order (the Order) with Concrete Precast Systems, Inc. (CPS). The Order required CPS to submit a revised storm water pollution prevention plan (SWP3) by November 1, 2001 for approval by Tidewater Regional Office (TRO). TRO received and approved the SWP3 on June 19, 2002.
11. By letter dated December 5, 2001, TRO Permit staff notified CPS that its existing permit application no longer reflected the current conditions at the facility. This

correspondence requested CPS to provide the following information so that the permit application could be amended to reflect these additions:

- (1) Redefine all sources and expected volumes for both process wastewater and storm water flows originating from industrial areas at the facility;
- (2) Identify locations where process operations are performed, and where materials associated with processing activities are stored;
- (3) Each drainageway (defined/permanent) for storm water runoff shall be clearly identified and an estimation of the area(s) contributing runoff to these conveyances shall be provided. All outfalls from the facility must be identified.

The amended application forms were due January 10, 2002. On January 23, 2002, DEQ again requested that CPS submit the above-mentioned information including information on the additional drop inlet discovered by DEQ on January 23, 2002. From January 23, 2002 to July 1, 2002, DEQ made ten requests for CPS to submit this information.

12. On February 5, 2002, a copy of the January 23, 2002 inspection report detailing the findings of the inspection was mailed to Jim Conner, CPS Safety Manager. A written response addressing corrective actions implemented to resolve problems listed in the report was requested by February 20, 2002. TRO did not receive a written response from CPS; however, a verbal response was provided to enforcement staff on 3/12/02.
13. A notice of violation (No. W2002-06-T-0003) was issued to CPS on June 21, 2002 for not submitting the SWP3 within the period specified in the consent order, and not responding to information requests regarding their operations and discharges.
14. CPS was required to submit a permit reissuance application to DEQ by February 3, 2003. A notice of violation (No. W2003-02-T-0002) was issued to CPS on February 5, 2003 for not submitting the permit reissuance application by the due date. On February 6, 2003, DEQ received the permit reissuance application.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders CPS, and CPS agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders CPS, and CPS voluntarily agrees, to pay a civil charge of \$9,450 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include CPS's Federal Identification Number. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of CPS, for good cause shown by CPS, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Warning Letter issued to CPS by DEQ on March 28, 2002, and the Notices of Violation issued to CPS by DEQ on June 21, 2002 and February 5, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, CPS admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. CPS consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. CPS declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by CPS to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CPS shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CPS shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CPS shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which CPS intends to assert, will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto; their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and CPS. Notwithstanding the foregoing, CPS agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to CPS. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CPS from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, CPS voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Francis L. Daniel, Tidewater Regional Director for  
Robert G. Burnley, Director  
Department of Environmental Quality

CPS voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of Chesapeake, VA

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of CPS, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

## APPENDIX A

CPS shall:

1. By **July 1, 2003**, install, operate, and maintain best management practices for the drop inlets located on the driveway entering CPS. By **July 1, 2003**, install, operate, and maintain best management practices for potential pollutant sources identified in the SWP3. By **July 8, 2003**, submit documentation illustrating the installation of the best management practices.
2. By **July 1, 2003**, update the SWP3 to reflect the current conditions and operating practices at CPS. By **July 8, 2003**, submit the SWP3 to DEQ for review and approval. Upon its approval, immediately implement and comply with the SWP3.
3. By **July 1, 2003**, review and update the Operations and Maintenance Manual (O&M Manual) to reflect current operating and maintenance procedures at CPS. By **July 8, 2003**, submit the O&M Manual to DEQ for review and approval.
4. Operate and maintain the storm water best management practice lagoon in accordance with the Permit and the Operation and Maintenance Manual.
5. All submittals and reports required by this Appendix A shall be mailed to:  
Francis L. Daniel  
Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462